

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JASON D. COOPER,

Plaintiff,

V.

JOSEPH LEHMAN, and ALICE PAYNE,

## Defendants.

Case No. C07-5264FDB

ORDER DIRECTING SERVICE  
BY UNITED STATES  
MARSHAL AND PROCEDURES

Plaintiff has been granted leave to proceed *in forma pauperis*. The court has reviewed the record and the most recently filed proposed Amended Complaint (Doc. 21), and the court finds it is appropriate for the U.S. Marshal to conduct service in this matter. However, the clerk's office has noted that Plaintiff has failed to provide marshals forms for each defendant to properly effect service in this matter. Accordingly, Plaintiff shall submit the necessary forms **by no later than September 7, 2007**, otherwise the court will recommend dismissal of this matter for lack of prosecution.

Upon receipt of the documentation, service of the complaint shall proceed as directed below:

(1) Service by United States Marshal.

It is hereby ORDERED that the United States Marshal shall send the following to each named defendant by first class mail: a copy of the Amended Complaint and of this Order, two copies of the Notice of Lawsuit and Request for Waiver of Service of Summons, a Waiver of Service of Summons, and a return envelope, postage prepaid, addressed to the Clerk's Office. All costs of service shall be advanced

1 by the United States. The Clerk shall assemble the necessary documents to effect service.

2 (2) Response Required

3 Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of Service of  
4 Summons. Each defendant who timely returns the signed Waiver shall have **sixty (60) days** after the date  
5 designated on the Notice of Lawsuit to file and serve an answer or a motion directed to the complaint, as  
6 permitted by Rule 12 of the Federal Rules of Civil Procedure.

7 Any defendant who fails to timely return the signed Waiver will be personally served with a  
8 summons and complaint, and may be required to pay the full costs of such service, pursuant to Rule  
9 4(d)(2). A defendant who has been personally served shall file an answer or motion permitted under Rule  
10 12 within **thirty (30) days** after service.

11 (3) Filing and Service by Parties, Generally.

12 All original documents and papers submitted for consideration by the court in this case, and a  
13 duplicate of all such papers, are to be filed with the Clerk of this court. The originals and copies of all  
14 such papers shall indicate in the upper right-hand corner the name of the Magistrate Judge to whom the  
15 copies are to be delivered. The papers shall be accompanied by proof that such documents have been  
16 served upon counsel for the opposing party (or upon any party acting *pro se*). The proof shall show the  
17 day and manner of service and may be written acknowledgment of service, by certificate of a member of  
18 the bar of this court, or by affidavit of the person who served the papers.

19 (4) Motions.

20 Any request for court action shall be set forth in a motion, properly filed and served. A party must  
21 file and serve with the motion a supporting memorandum. The motion shall include in its caption  
22 (immediately below the title of the motion) a designation of the Friday upon which the motion is to be  
23 noted upon the court's calendar. That date shall be the third Friday following filing of the motion (fourth  
24 Friday for Motions for Summary Judgment). All briefs and affidavits in opposition to any motion shall be  
25 filed and served not later than 4:30 p.m. on the Monday immediately preceding the Friday appointed for  
26 consideration of the motion. If a party fails to file and serve timely opposition to a motion, the court may  
27 deem any opposition to be without merit. The party making the motion may file, not later than 4:30 p.m.  
28 on the Thursday immediately preceding the Friday designated for consideration of the motion, a response

1 to the opposing party's briefs and affidavits.

2 (5) Motions for Summary Judgment

3 If one of the parties files a motion for summary judgment pursuant to Federal Rules of Civil  
4 Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56 requires a  
5 nonmoving party to submit affidavits or other evidence in opposition to a motion for summary judgment  
6 if the moving party has shown the absence of issues of material fact and an entitlement to judgment as a  
7 matter of law. A nonmoving party may not rest upon the mere allegations or denials of prior pleadings.  
8 Rather, successful opposition to a motion for summary judgment requires the nonmoving party to set  
9 forth, through affidavits or other evidence, specific facts showing a genuine issue for trial. Failure by the  
10 nonmoving party to oppose a summary judgment motion or to present counter evidence could result in the  
11 Court accepting the moving party's evidence as the truth, and entering final judgment in favor of the  
12 moving party without a full trial. Rand v. Rowland, 113 F.3d 1520 (9<sup>th</sup> Cir. 1997).

13 (6) Direct Communications with District Judge or Magistrate Judge

14 No direct communication is to take place with the District Judge or Magistrate Judge with regard  
15 to this case. All relevant information and papers are to be directed to the Clerk.

16 (6) Clerk's Action

17 The Clerk is directed to send a copy of this Order and of the General Order issued by the  
18 Magistrate Judges to plaintiff.

19 DATED this 16<sup>th</sup> day of August, 2007.

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21 */s/ J. Kelley Arnold*  
22 J. Kelley Arnold  
23 United States Magistrate Judge  
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